

S0270024
S 0010035

James P. Allen
UTAH ATTORNEY GENERAL'S OFFICE
1594 W. North Temple #300
Salt Lake City, UT 84116
Attorney for Respondent
Utah Division of Oil, Gas, & Mining

FILED
MAY 22 2007
SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

In the Matter of the Request for Agency
Action by

Penney's Gemstones, David L. Penney,

Petitioner,

For Review of the Division's Cessation Orders
and Assessment of Penalties, Sliver 1-2 Mine,
Beaver County, and Little Spot Mine, Millard
County

**DIVISION'S RESPONSE TO
PETITION FOR REVIEW**

Cause Nos. S/027/024 – Little Spot
S/001/035 – Sliver 1-2

Docket No. 2007-002

Penney's Gemstones LLC appeals Cessation Orders and penalties issued by the Division of Oil, Gas and Mining (the Division) with respect to violations of the Utah Mined Land Reclamation Act at the Sliver 1-2 mine in Beaver County, and the Little Spot mine in Millard County. Because Mr. Penney has not advised the Board of the grounds for his appeal, nor indicated that he will appear at this hearing, the Division requests that the Board dismiss the matter. Alternatively, the Division requests that the Board affirm the Cessation Orders and assessment of penalties in both cases. Because Penney's payment of fines is held in escrow pending this appeal, dismissing the appeal has the same financial effect as affirming the Division's assessment.

STATEMENT OF FACTS

Sliver 1-2 Mine, Beaver County

1. Penney's Gemstones LLC (Penney's) is the owner and operator of the Sliver 1-2 Mine in Beaver County. Penney's recovers a decorative stone known as Picasso Marble from the mine. David L. Penney is the manager and registered agent for Penney's Gemstones.
2. Acting on information from the Cedar City office of the Bureau of Land Management (BLM), Division Reclamation Specialist Tom Munson inspected the property on June 30, 2005. Relying on survey work performed by BLM, he found that Penney's mining operation was occurring mostly on an adjacent patented claim owned by Karl Truman. (Division's Exhibit 1.)
3. At the time, Penney's had no lease or other permission from Truman for entry and removal of minerals. Penney's notice of intent only identified mining to occur on BLM lands claimed under "3809" provisions and not on Mr. Truman's fee property.
4. The Division issued Cessation Order MC-2005-04-05 on September 2, 2005 requiring Penney's to cease all mining-related activities, and within 45 days, obtain a lease from Truman and post a \$15,000 reclamation surety or immediately commence reclamation activities. (Div'n Ex. 2.)
5. On September 28, 2005 the Division notified Penney's of a proposed assessment of \$1760 in penalties resulting from the violation contained in the Cessation Order. (Div'n Ex. 3.)
6. Upon the expiration of the 45-day period of time allowed, the Division by letter noted that Penney's had not abated the violations in the Cessation Order. (Div'n Ex. 4.)

7. Upon representations by Penney's that additional time was needed to reach agreement with Truman, the Division issued modifications to the cessation order extending the time for abatement of the violation, and setting an informal conference regarding the violation and penalty. (Div'n Ex. 5.)
8. At an informal conference on January 10, 2006, the Division again agreed to extend the time allowed for Penney's to reach an agreement with Truman. (Div'n Ex. 6.) At Penney's request, that deadline was further extended. (Div'n Ex. 6A.)
9. After receiving some evidence (in the form of a cancelled check) that Penney's had made a payment on a lease from Truman, the Division on May 10, 2006 terminated the cessation order for the Sliver 1-2 mine. The letter accompanying the termination reminded Penney's of three outstanding compliance issues: (1) Penney's Notice of Intent must be amendment to reflect the area actually being mined; (2) the Division still required posting a \$12,000 reclamation surety; and (3) Penney's must execute a proper reclamation contract. (Div'n Ex. 7.)
10. On July 18, 2006 Division Associate Director Mary Ann Wright, acting as hearing officer for the informal conference, issued an order affirming the violation and cessation order, but reducing the penalty from \$1760 to \$550. (Div'n Ex. 8.)
11. Penney's paid the fine by check dated August 9, 2006 drawn against the account of David Penney and Penney's Gemstones. The checks were deposited to the Division's fines and forfeitures (fund 2210) account. (Div'n Ex. 9.)

Little Spot Mine, Millard County

12. Penney's Gemstones (Penney's) is owner and operator of the Little Spot mine in Millard

County. Penney's mines snowflake obsidian at this site.

13. On July 7, 2005 Division Reclamation Specialist Tom Munson inspected the permit area and found that Penney's operations exceeded the bounds of its five-acre permitted area and encompassed 8.75 acres of disturbed ground. (Div'n Ex. 10.)
14. On August 2, 2005 the Division issued Cessation Order MC-2005-04-04 requiring cessation of all mining-related activity. The Order required five actions to abate the violations: (1) post a \$40,000 reclamation bond by August 15, 2005; (2) if Penney's wished to continue under its existing small-mine Notice of Intent, mark on the ground the boundary of the area where mining will continue; (3) provide a map indicating this area; (4) if Penney's wished to continue operation in a area greater than five acres, complete and file an appropriate large-mine Notice of Intent; and (5) submit plans to reclaim the disturbed area outside a marked and mapped site, smaller than five acres, where operations would continue under the existing small-mine Notice. (Div'n Ex. 11.)
15. After the Cessation Order was returned unclaimed, the Division posted the Order at the mine site. (Div'n Ex. 12.) Shortly thereafter, Mr. Penney contacted the Division, cited his absence from the State as cause for delay, and indicated that Penney's would undertake reclamation work that fall. (Div'n Ex. 13.)
16. On September 28, 2005 the Division notified Penney's of a proposed assessment of \$1760 in penalties resulting from the violation contained in the Cessation Order. (Div'n Ex. 14.)
17. A subsequent inspection found that Penney's had reseeded and reclaimed the disturbed area outside its five-acre small-mine permit area. (Div'n Ex. 15.)

18. Upon the expiration of the 45-day period allowed, the Division by letter on November 16, 2005 noted that Penney's had not performed the remaining abatement actions required in the Cessation Order. (Div'n Ex. 3.)
19. Upon representations that additional time was needed to complete bonding paperwork, the Division on December 8, 2005 issued modifications to the Cessation Order extending the time for abatement of the violation, and setting an informal conference regarding the violation and penalty. (Div'n Ex. 16.)
20. Following an Informal Conference on January 10, 2006, the Cessation Order was modified to allow Penney's until February 10, 2006 to complete the following: (1) post \$8800 surety to supplement the \$9800 of Penney's nationwide federal bond assigned to the Little Spot operation and arrange to have the Division named as a beneficiary on the nationwide bond; (2) comply with the requirement for marking the intended future area of disturbance; and (3) provide an accurate legal description of the area. Div'n Ex. 17.) The deadline was subsequently extended at Penney's request. (Div'n Ex. 17A.)
21. On July 21, 2006 Division Associate Director Mary Ann Wright, acting as hearing officer for the informal conference, issued an order affirming the violation and cessation order, but reducing the penalty from \$1760 to \$770. (Div'n Ex. 18).
22. Penney paid the fine by check dated August 9, 2006 drawn against the account of David Penney and Penney's Gemstones. (Div'n Ex. 9.) The checks were deposited to the Division's fines and forfeitures (fund 2210) account. Penney's later filed this appeal, requesting a May hearing date to accommodate Mr. Penney's travel plans. (Div'n Ex. 19.)

23. The Division notified Penney's of this hearing via Certified Mail. In addition, notice of the hearing was published in the *Millard County Chronicle Progress* on May 2, 2007, in the *Beaver Press* on May 3, 2007, and in the *Salt Lake Tribune* and the *Deseret Morning News* on May 6, 2007. (Div'n Ex. 20.)

ARGUMENT

I. Because Penney's Has Failed To Participate In The Hearing, Its Appeal Should Be Dismissed.

This Board's rules provide that when a party fails to appear at a hearing after due notice has been given, "the Board may dismiss or continue the matter or decide the matter against the interest of the party who fails to appear." Utah Admin. Code R641-108-400 (2007); *see also* R641-104-151.100 (providing that the Board may enter an order of default against a party who fails to appear). An administrative agency fulfills its obligation to provide due notice by sending it via certified mail. *Utah Air Quality Bd. v. Truman Mortensen Family Trust*, 8 P.3d 266, 270 (Utah 2000).

The Division provided due notice of this hearing by sending it via Certified Mail and advertising it in newspapers. The Division represents to the Board that it knows of no good cause to continue the matter to a future hearing. Therefore, because Penney's has not appeared to advise the Board of the grounds for his appeal after receiving due notice, dismissal is the appropriate remedy.

II. The Division Properly Issued Cessation Orders After Discovering Violations at the Sliver 1-2 and Little Spot Mines.

The Division notes that, as the petitioner, Penney's bears the burden of proof in this hearing seeking reversal of Cessation Orders and Penalties. Although Penney's has not identified

any legal argument for reversal of the Orders and Penalties, the Division nevertheless offers the following paragraphs to elaborate on the legal basis for the Cessation Orders at the Sliver 1-2 and Little Spot mines.

- a. Sliver 1-2 Mine was Properly Cited for Failing to Identify the Owner and Obtain a Lease under a Small Mine Notice of Intent.

The Utah Mined Land Reclamation Act requires that a mine operator shall identify all owners of surface and mineral rights on lands affected by any mine identified in a Notice of Intent. Utah Code Ann. § 40-8-13(b)(i). When federal or state claims, leases, or permits are required, the operator shall also identify these by number. Utah Admin. Code R647-3-104. The Division has authority to inspect a mine, order cessation of operations, and require affirmative abatement if there is a danger of permanent environmental harm. Utah Code Ann. § 40-8-9(3)(b).

In this case, the Division learned that Penney's was mining Picasso Marble from ground adjacent to but not identified in its Notice of Intent for the Sliver 1-2 mine. Based on a site inspection and representations of the landowner and Bureau of Land Management, the Division determined that mining operations by Penney's were occurring primarily outside its permitted area on patented claims belonging to Karl Truman. At the time, Penney's had no lease or other permission from Truman. Accordingly, the Division determined that Penney's Notice of Intent did not accurately identify the lands affected, and that continued operations without a contract or bond for reclamation presented an imminent threat of permanent environmental damage. Under the Mined Land Reclamation Act and This Board's rules, a Cessation Order was the proper action for the Division to take.

b. The Little Spot Mine Was Properly Cited for Conducting Operations on More than Five Acres of Disturbed Ground Without Obtaining a Large Mine Permit.

A small mine operator must file of notice of intent to conduct large mining operations, and obtain Division approval, prior to expanding its operation beyond five acres of surface disturbance. Utah Admin. Code R647-3-114 (The Division's initial Cessation Order incorrectly identifies this provision as R647-4-113). For the purpose of calculating the amount of surface disturbance, all of the area disturbed by exploration for, development of, or extraction of a mineral deposit and includes roadways, refuse banks, spoil piles, stockpiles, equipment storage, and parking areas. *Id.* at R647-1-106.

An inspection of the Little Spot Mine site by the Division found 8.75 acres of disturbed ground, while the Notice of Intent identified only 4.2 acres. Penney's had not filed any notice of intent to expand operations beyond the area specified in its original small mine notice of intent. Because there was disturbed surface not covered by any reclamation agreement or surety, the Division concluded that there was imminent danger of permanent environmental harm and issued a cessation order, which was a proper response under this Board's rules.

III. The Division Properly Imposed Civil Penalties

If a violation results in a Cessation Order, the Division *must* calculate and assess a penalty. Utah Code Ann. § 40-8-9.1(1)(a)(i). This Board's rules provide a point system for evaluating the fault of the operator and the seriousness of the violation, as well as other factors. *See* Utah Admin. Code R647-7-103. Using this system, the Division advises the violator of the proposed penalty, which may be adjusted in an informal conference if requested. *Id.* at R647-7-105, R647-7-106.

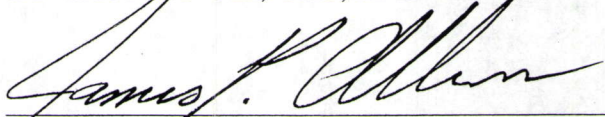
For the Sliver 1-2 Mine, the Division proposed \$1760 in penalties. After receiving additional information about the seriousness of the harm involved, and the extent of actual damage, the Division's hearing officer reduced the penalty to \$770. For the Little Spot Mine, the Division also proposed \$1760 in penalties. The hearing officer reduced this amount to \$550 based on information received at the informal conference.

CONCLUSION

The record of these cessation orders and civil penalties shows that the Division acted with patience, flexibility, and restraint appropriate to Penney's situation as an independent artisan miner. Without Penney's participation in the proceedings he requested, the matter should be dismissed. In any event, the record shows that Division properly applied the Utah Mined Land Reclamation Act and this Board's rules in issuing the orders and penalties. If the matter is not dismissed, the Division respectfully requests that the Cessation Orders and penalties be affirmed.

Respectfully submitted this 22nd day of May, 2007.

DIVISION OF OIL, GAS, AND MINING



James P. Allen (#11195)

Assistant Attorney General

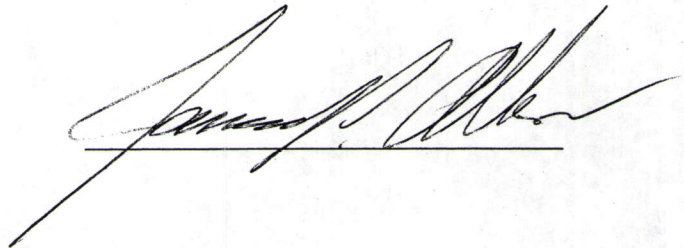
CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing DIVISION'S
RESPONSE TO PETITION FOR REVIEW, via United States mail, postage prepaid, to the
following:

Penney's Gemstones
David L. Penney
2400 East 30 South
P.O. Box 312
Beaver, UT 84713-0312
(and via electronic mail w/o exhibits)

Kay L. McIff
The McIff Firm, PC
225 North 100 East
Richfield, Utah 84701

Michael S. Johnson
Stephen G. Schwendiman
Utah Attorney General's Office
Natural Resources Division
1594 W. North Temple #300
Salt Lake City, Utah 84116

A handwritten signature in black ink, appearing to read "Michael S. Johnson", is written over a horizontal line.



JON M. HUNTSMAN, JR.
Governor
GARY R. HERBERT
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director

JOHN R. BAZA
Division Director

Supervisor ADZ

Inspection Report
Minerals Regulatory Program
Report Date: 8/17/2005

Mine Name: Sliver 1-2
Operator or Permittee Name:
David Penney
Permittee Mailing Address:
2400 E 30 S
Box 312
Beaver, Utah 84713-0312

Permit number: S010035
Inspection Date: 06/30/2005

Inspector(s): Tom Munson

Other Participants: none

Permit Status: Inactive
Current Acreages: 2.39 acres(BLM)
Total Permitted (Bonded): 5 acres(none)
Total Disturbed: 2.39 acres(BLM)

Weather: Sunny
Inspection Start Time: 3 PM
Inspection End Time: 4 PM
Site location/Area Inspected (i.e. Pit #):
pit
Surface Ownership: FEE
Mineral Ownership: FEE
Mineral Mined: marble
Type of Mine: open pit

Elements of Inspection	Evaluated	N/A	Comment	Enforcement
1. Permits, Revisions, Transfer, Bonds	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Public Safety (open shafts, adits, trash, signs, highwalls)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Protection of Drainages	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Explosives, magazines	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Deleterious Material	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Roads (maintenance, surfacing, dust control, safety)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Concurrent Reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Erosion Control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Demolition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Backfilling and Grading (trenches, pits, roads, highwalls, shafts, drill holes)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Water Impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Soils	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Revegetation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Air Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Inspection Date: 6/30/2005; Report Date: 8/17/2005
Page 2 of 2
S010035

Purpose of Inspection:

To determine the current status of the site and a course of action regarding the permit.

Inspection Summary:

1.) Permits, Revisions, Transfer, Bonds: To determine current status since it was determined by the BLM that Mr. Penney was trespassing on Karl Truman's patented mining claims. Mr. Penney listed the land ownership as BLM on his application with the State.

Mr. Penney does not have legal right of entry, according to the BLM and the owner of the Patented Claims, Karl Truman (435-386-2222). The BLM, Ed Ginouves, surveyed all the applicable claim corners/ monuments and determined that Mr. Penney was almost solely on Patented claims belonging to Mr. Karl Truman. Therefore, it becomes important that within a short period of time the operator either reclaim the property or execute a transfer to Mr. Karl Truman and a bond of \$15,000 is put in place to cover the three (3) acres. It will also be necessary to write a Cessation Order, since Mr. Penney does not have the legal rights to enter the property and falsified his original permit application.

2.) Public safety: The site has a substantial 30 foot high wall that might be considered a safety hazard, although it is not overhanging.

Directions to the site: The next time I visit the site, it will be necessary to document the access. It sits approximately 5 miles North of Minersville in the Mineral Mountains.

GPS data:

None collected during this inspection.

Inspector's Signature



Date: 8/17/2005

TM:jb

Enclosures: photos, BLM Inspection reports of May 14,2003 and May 16,2003

cc: Dave Penney, Operator

Ed Ginouves, BLM Cedar City, inspection report and photos only

O:\M001-Beaver\S0010035-Sliver1-2\inspections\inspection06302005.doc



State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

September 1, 2005

Mr. David Penney
2400 East 30 South
Box 312
Beaver, Utah 84713-0312

Subject: No Legal Right of Entry, David Penney, Sliver 1-2, S/001/035, Beaver
County, Utah

Dear Mr. Penney:

The Division recently inspected the Sliver 1-2 mine (inspection report enclosed). After reading and discussing your right of entry to this mine with both the BLM and Mr. Karl Truman, it is apparent that you have no rights to mine this property.

The Division is hereby issuing a Cessation Order which requires you to cease mining and requiring you obtain a lease from Mr. Truman and post a bond for \$15,000 or immediately commence reclamation with Mr. Truman's permission.

If you have any questions regarding this action please contact me at 801-538-5325.

Sincerely,

Daron Haddock
Permit Supervisor
Minerals Regulatory Program

DRH:TM:jb
Attachment: inspection reports
cc: Ed Ginouves, BLM Cedar City
O:\M001-Beaver\S0010035-Sliver1-2\non-compliance\rightofentry.doc



JON M. HUNTSMAN, JR.
Governor
GARY R. HERBERT
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director
JOHN R. BAZA
Division Director

Page 1 of 3

Notice of Violation ☐ No. _____
Cessation Order ☒ No. MC-2005-04-04(1)

CERTIFIED RETURN RECEIPT # 7002 0510 0003 8603 4193

To the following Permittee or Operator:

Permittee/Operator Name: David Penney

Mine Name: Sliver 1-2 ☒ Surface ☐ Underground ☐ Other

County: Beaver State: Utah Telephone Number: (435) 438-5522

Business Address: 2400 East 30 South, Box 312, Beaver, Utah 84713-0312

Permit Number: S/001/035

Ownership Category: ☐ State ☒ BLM ☐ USFS ☒ Fee ☐ Other

Date of Inspection: June 30, 2005 Time: 4:30 ☐ a.m. ☒ p.m. to 5:00 ☐ a.m. ☒ p.m.

Under authority of the Utah Mined Land Reclamation Act, Section 40-8-1 et seq., *Utah Code Annotated*, 1953, the undersigned authorized representative of the Division of Oil, Gas, and Mining has conducted an inspection of above mine on above date and has found that a Notice of Violation or Cessation Order must be issued with respect to the conditions, practices, or violations listed. In accordance with Section 40-8-9, *Utah Code Annotated*, you are ordered to cease immediately the operations or activity described and to perform the required actions described within the designated time for abatement.

The undersigned representative finds that this order ☒ does require cessation of all mining;
☐ does not require cessation of all mining.

For this purpose, "mining" means development of, or extraction of a mineral deposit, including transportation within or from the mine site, concentrating, milling, evaporation, or other processing. Mining and/or reclamation operations not directly the subject of this order shall continue while this order is in effect. You are responsible for doing all work in a safe and workmanlike manner.

This order shall remain in effect until it is modified, terminated or vacated by written notice of an authorized representative of the director of the Division of Oil, Gas, and Mining.

Date of service/mailling: September 2, 2005

Time of service/mailling 4:00 p.m.

David Penney
Permittee or Operator Representative

Title

Signature

Tom Munson
Division of Oil, Gas & Mining Representative

Senior Reclamation Hydrologist
Title

Signature

SEE REVERSE SIDE

1. PENALTIES.

a. **Proposed assessment.** The Division of Oil, Gas, and Mining (DOGM) assesses fines based upon a proposed assessment recommended by an assessment officer. You may submit written information pertaining to violation(s) covered by this order within 15 days of the date this notice or order is served on you or your agent. Information will be used by the assessment officer in determining facts surrounding the violation(s) and amount of penalty. A representative of the DOGM will serve the proposed assessment on you or your agent within 30 days of issuance of notice or order.

b. **Assessment.** The penalty will be final unless you or your agent file a written request within 15 days of receipt of proposed assessment for an informal hearing before the assessment officer.

For each violation included in this notice, a penalty of up to \$5,000 may be assessed for each separate day the violation continues.

If you fail to abate any violation within the time set for abatement or for meeting any interim step, you will be assessed an additional minimum penalty of \$750 for each day of continuing violation beyond the time set for abatement. In addition, if you fail to abate any violation as required you will be issued a Cessation Order requiring you to cease mining operations on the portion of the operations relevant to the violation.

2. STOP WORK CONFERENCE.

A Stop Work Conference may be requested if this notice requires cessation of all mining. On the reverse of this page, the authorized representative has made a finding as to whether or not this notice requires cessation of all mining. (See Utah Admin. R647-6-102.4 et seq.)

You must request the Stop Work Conference within 30 days after service of this Cessation Order. The conference must be held within 5 days of your request. You will be notified of the date, time, and location of the conference.

Please send your conference request to:

Administrative Secretary
Associate Director of Mining
1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801

3. FORMAL REVIEW AND TEMPORARY RELIEF.

You may apply for review of this notice, order or proposed assessment before the Board of Oil, Gas, and Mining by submitting an application for hearing within 30 days of receipt of notice or assessment by you or your agent. Apply to:

Secretary
Board of Oil, Gas, and Mining
1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801

If applying for a formal board hearing, you may submit with your petition for review a request for temporary relief from this notice. Procedures for obtaining a formal board hearing are contained in the board's Rules of Practice and Procedure and in Utah Admin. R. 647-5 et seq.

4. INDIVIDUAL CIVIL PENALTIES.

An additional individual civil penalty of up to \$5000 per day may be assessed against any corporate director, officer, or agent who knowingly and willfully authorized, ordered or carried out a violation or who fails or refuses to comply with an order.

For further information, consult *Utah Code Annotated* Section 40-8-9, 9.1, Utah Admin. R. 647-6, 7, 8 seq. or contact the Division of Oil, Gas, and Mining at (801) 538-5304.

Notice of Violation / Cessation Order NO.

Violation No. 1 of 1

Page 3 of 3

Nature of condition, practice, or violation:

Failure to secure a lease for lands affected.

Provisions of act, regulations, or permit violated:

R647-3-104.3

(Check box if appropriate:)

- ☐ Condition, practice, or violation is creating an imminent danger to health or safety of the public.
- ☐ Permittee/Operator is/has been conducting mining activities without a permit.
- ☒ Condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.
- ☐ Permittee or Operator has failed to abate Violation(s) No. _____ included in Notice of Violation No. or Cessation Order No. M _____ within time for abatement originally fixed or subsequently extended.

Mining activity to be ceased immediately:

All mining related activities

Affirmative obligation(s) or required action and abatement time (if applicable):

1: Within 45 days, obtain lease from Mr. Truman and post \$15,000 surety; or

2: Immediately commence reclamation with Mr. Truman's permission

jb

cc: DOGM
Operator
File

O:\M001-Beaver\S0010035-Silver1-2\non-compliance\CO-MC-2005-04-04.doc



State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

September 28, 2005

CERTIFIED RETURN RECEIPT
7002 0510 0003 8603 3080

Mr. David Penney
2400 East 30 South
Box 312
Beaver, Utah 84713-0312

Subject: Proposed Assessment for Cessation Order MC-2005-04-05(1), David Penney, Sliver 1-2, S/001/035, Beaver County, Utah

Dear Mr. Penney:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division Inspector, Tom Munson, on September 2, 2005. Rule R647-7-103 et. seq. has been utilized to formulate the proposed penalty for the violation as follows:

- MC-2005-04-05(1) – Violation 1 of 1 \$1760
(See modification form changing cessation order number)

The enclosed worksheet specifically outlines how the violation was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the violation and the amount of penalty. If the violation has not been abated at the time of the proposed assessment, the assignment of good faith points cannot be made. If you feel that you are eligible for good faith, you should supply relevant information to the assessment officer within 15 days of the violation abatement date so that it can be factored into the final assessment.

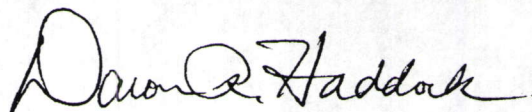
David Penney
Page 2 of 6
S/001/035
September 28, 2005

Otherwise, under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director or Associate Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the final assessment. Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Daron R. Haddock
Assessment Officer

Enclosure: Worksheets
cc: Vickie Southwick, Exec. Sec.
Vicki Bailey, Accounting
O:\M001-Beaver\S0010035-Sliver1-2\non-compliance\proAssessment-CO.doc

WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING
Minerals Regulatory Program

COMPANY / MINE Penney's Gemstones/ Sliver 1-2 Mine

PERMIT S/001/035

NOV / CO # MC-2005-04-05(1)

VIOLATION 1 of 1

ASSESSMENT DATE September 27, 2005

ASSESSMENT OFFICER Daron R. Haddock

I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

*** *An Operator is required to obtain a lease or right-of-entry prior to conducting mining operations. Approximately 2.39 acres has been disturbed at this location without having the appropriate approval. While the Operator has filed a small mine notice of intent he cannot conduct mining operations without having the right of entry. The Operator has created a 2.39 acre disturbance, which includes a pit, a waste dump and road. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector stated that the operator has disturbed approximately 2.39 acres of land that had not been approved for disturbance. The damage was the creation of a 2.39 acre mining disturbance within an area that the operator did not have a lease. There is a pit and highwall that could present some hazard if not properly reclaimed. Further discussion with the inspector revealed that the damage is probably temporary. While much of the soil and vegetation have been disturbed, the site could still be reclaimed. While the damage is extensive over the 2.39 acres, it probably does not leave the site. Damage is assessed in the lower 1/3 of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? _____
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 28

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector indicated that the violation was the result of the Operator not taking reasonable care in securing right of entry to the property. The Operator thought he had been operating on BLM property but in reality had been operating on patented mining claims owned by a Mr. Karl Truman. While the mining claims in this area are somewhat complex, the BLM was able to determine that the Operator did not have right of entry to the area where he is mining. This indicates indifference to the rules or lack of reasonable care. A prudent operator would understand the need to keep within the approved boundaries and obtain the right of entry prior to disturbing an area. The Operator was negligent in this regard, thus the assignment of points in the middle part of the negligence range.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?
IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)

- Normal Compliance 0
(Operator complied within the abatement period required)
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper or lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Difficult

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

*** *The abatement has not yet been completed, so good faith points cannot be awarded at this time. This category will be looked at again after the abatement has been completed. Points will be awarded depending on how quickly the abatement is met.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MC-05-04-05(1)</u>	
I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>28</u>
III. TOTAL NEGLIGENCE POINTS	<u>8</u>
IV. TOTAL GOOD FAITH POINTS	<u>-</u>
TOTAL ASSESSED POINTS	<u>36</u>

TOTAL ASSESSED FINE \$ 1,760

5/20/03
CO.

EVENT VIOLATION
INSPECTOR'S STATEMENT
MINERALS REGULATORY PROGRAM

Company/Mine: Penney's gemstones LLC
Permit #: S010035

CO # MC-2005-04--04
Violation # 1 of 1

SERIOUSNESS

1. What type of event is applicable to the regulation cited? Refer to the DOGM reference list of event below and remember that **the event is NOT the same as the violation**. Mark and explain each event.

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | a. Activity outside the approved permit area. |
| <input type="checkbox"/> | b. Injury to the public (public safety). |
| <input checked="" type="checkbox"/> | c. Damage to property. |
| <input checked="" type="checkbox"/> | d. Conducting activities without appropriate approvals. |
| <input checked="" type="checkbox"/> | e. Environmental harm. |
| <input type="checkbox"/> | f. Water pollution. |
| <input checked="" type="checkbox"/> | g. Loss of reclamation/revegetation potential. |
| <input checked="" type="checkbox"/> | h. Reduced establishment, diverse and effective vegetative cover. |
| <input type="checkbox"/> | i. No event occurred as a result of the violation. |
| <input type="checkbox"/> | j. Other. |

Explanation: The operator mined without proper right of entry or a lease to the private land when his permit stated the land was Bureau of Land Management land.

2. Has the event or damage occurred? yes
If yes, describe it. If no, what would cause it to occur and what is the probability of the event(s) occurring? (None, Unlikely, Likely).

Explanation: Approximately 2.39 acres of land was disturbed and approximately a 1000 tons of rock was removed.

3. Did any damage occur as a result of the violation? yes

4. If yes, describe the duration and extent of the damage or impact. How much damage may have occurred if the violation had not been discovered by a DOGM inspector? Describe this potential damage and whether or not it would extend off the disturbed and/or permit area.

Explanation: A pit, a waste dump and road were created.

B. DEGREE OF FAULT (Check the statements which apply to the violation and discuss).

- ☒ Was the violation not the fault of the operator (due to vandalism or an act of God), explain. Remember that the permittee is considered responsible for the actions of all persons working on the mine site.

Explanation: The Violation was the fault of the operator not operating the mine in the proper location.

- ☒ Was the violation the result of not knowing about DOGM regulations, indifference to DOGM regulations or the result of lack of reasonable care.

Explanation: I would say it was the result of lack of reasonable care.

- ☐ If the actual or potential environmental harm or harm to the public should have been evident to a careful operator, describe the situation and what, if anything, the operator did to correct it prior to being cited.

Explanation: The operator has stopped mining and gave some of the rock to the Owner, Karl Truman.

- ☐ Was the operator in violation of a specific permit condition?

Explanation: _____

- ☐ Has DOGM cited the violation in the past? If so, give the dates and the type of warning or enforcement action taken.

Explanation: _____

Was any economic benefit gained by the operator for failure to comply? yes
If yes explain.

Explanation: The operator mined approximately 1000 tons of rock at 700 dollars per ton.

GOOD FAITH

1. In order to receive good faith for compliance with an NOV or CO, the violation must have been abated before the abatement deadline. If you think this applies, describe how rapid compliance was achieved (give date) and describe the measures the operator took to comply as rapidly as possible.

Explanation: _____

2. Explain whether or not the operator had the necessary resources on site to achieve compliance.

Explanation: The operator currently has no equipment on site

3. Was the submission of plans prior to physical activity required by this NOV / CO? _____ If yes, explain.

Explanation: _____

Tom Munson
Authorized Representative


Signature

8/18/2005
Date



State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

November 16, 2005

CERTIFIED RETURN RECEIPT 7002 0510 0003 8603 2700

Mr. David Penney
2400 East 30 South
Box 312
Beaver, Utah 84713-0312

Subject: Noncompliance with Cessation Orders, Penney's Gemstones, Sliver 1-2, MC-2005-04-05, S/001/035, Beaver County, Utah and Little Spot, MC-2005-04-04, S/027/024, Millard County Utah

Dear Mr. Penney:

This letter is in response to your October 26, 2005 email, wherein you request a time extension to complete the abatement for the above referenced Cessation Orders. The Division is growing increasingly weary of the delay in addressing the abatement requirements of the outstanding Cessation Orders at the above-referenced sites. We understand your predicament with regard to your absence from the State of Utah and we have already extended the abatement timeframe to accommodate your situation. However, we have nearly exhausted all avenues for remedying the Cessation Orders and we still do not have a clear picture of the status of these mines and your intent to comply with the Utah Regulatory program. Our records indicate that you received the Cessation Orders on September 7, 2005. With this letter we will modify the abatement period on the Cessation Orders to coincide with the maximum allowable time. The maximum abatement period allowed under our rules is 90 days, which means that you must now have the abatement completed by no later than December 7, 2005.

I have copied the abatement requirements from the Cessation Orders below. The only change to these requirements is the due date, which is now December 7, 2005. I must impress on you the seriousness of your situation. Thus far we have no indication that any of the abatement requirements have been met or will be met. If these abatement requirements are not satisfied, you will be

David Penney
Page 2 of 3
S/001/035 and S/027/024
November 16, 2005

subject to a Failure to Abate Cessation Order, which carries a \$750 a day fine for each violation. This would translate to a \$22,500 fine for each violation if allowed to run for 30 days. It is in your best interest to complete the required abatement as quickly as possible.

Little Spot

- 1.) By August 15, 2005 post a \$40,000 reclamation surety for the existing disturbance with the Division.
- 2.) By August 15, 2005 mark the five-acre small mine area where operations will continue, if you intend to maintain a small mine.
- 3.) By August 15, 2005 provide a **map** with sufficient detail to show the location and delineate the five-acre area where operations will continue.
- 4.) By October 15, 2005, complete an NOI for a large mine which will encompass the area disturbed. Mining operations may not resume outside the five acre small mine area until the large mine notice is approved.
- 5.) As an alternative, you may submit plans to reclaim the area down to a five acre-site, thus retaining the site as a small mine. With this alternative, you would still need to provide the map and post the surety until the reclamation work is completed and released. Please notify the division by August 15, 2005 if you elect to use this alternative.

Sliver 1-2

- 1: Within 45 days, obtain lease from Mr. Truman and post \$15,000 surety; or
- 2: Immediately commence reclamation with Mr. Truman's permission

With regard to the Sliver 1-2 mine, you indicate that Mr. Truman's patented land is being worked by him or others. We have no record of a notice of intent being filed by Mr. Truman or anyone else. Our records do indicate that you have mined in this area and are responsible for much of the disturbance at this site even though you may not have had right-of-entry to this property. This being the case you are responsible for reclamation of the disturbance you have created. You may need to work out an arrangement with Mr. Truman to arrange for reclamation of the site.

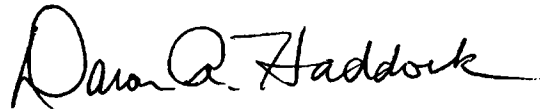
We are hoping to come to a speedy resolution of these outstanding orders and hereby ask that you provide, a thorough update on the status and your

David Penney
Page 3 of 3
S/001/035 and S/027/024
November 16, 2005

expected plans for completing the abatement requirements. This should include a specific timetable (not to exceed December 7, 2005) for achieving compliance with our outstanding orders.

If you have any questions regarding this action please contact me at 801-538-5325.

Sincerely,



Daron Haddock
Permit Supervisor
Minerals Regulatory Program

DRH:jb
O:\M001-Beaver\S0010035-Sliver1-2\non-compliance\finalextension.doc
O:\M027-Millard\S0270024-LittleSpot\non-compliance\finalextension.doc



JON M. HUNTSMAN, JR.
Governor
GARY R. HERBERT
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director

JOHN R. BAZA
Division Director

Page 1 of 1

MODIFICATION of
Notice of Violation / Cessation Order

To the following Permittee or Operator:

Name: David Penney

Mailing Address: 2400 East 30 South, Box 312, Beaver, Utah 84713-0312

Mine Name: Sliver 1-2 Permit Number: S/001/035

Utah Mined Land Reclamation Act, Section 40-8-1 et. seq., *Utah Code Annotated (1953)*:

Cessation Order No MC-2005-04-05 dated September 2, 2005

Part 1 of 1 is modified as follows: The abatement deadline is extended until January 24, 2006.

Reason for modification is: In light of the difficulties in completing the necessary paperwork for bonding and right of entry, the operator has requested an informal conference which will occur on January 10, 2006 at 11AM. Therefore, abatement timeframe has been extended to allow for this hearing to occur regarding these issues and a decision to be rendered regarding the abatement of the cessation order following this hearing.

Date of service/mailling: December 8, 2005

Time of service/mailling 3:00 ☒ p.m.

Date of inspection: June 30, 2005

Tom Munson
Division of Oil, Gas & Mining Representative

Tom Munson
Signature

Senior Reclamation Specialist
Title

O:\M001-Beaver\S0010035-Sliver1-2\non-compliance\NOV-CO-modify-1282005.doc

3/001/035



State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

JON M. HUNTSMAN, JR.
Governor

MICHAEL R. STYLER
Executive Director

JOHN R. BAZA
Division Director

GARY R. HERBERT
Lieutenant Governor

Page 1 of 1

MODIFICATION of

Notice of Violation / Cessation Order

Certified Return Receipt: 7004 2510 0004 1824 3557

To the following Permittee or Operator:

Name: David Penney

Mailing Address: 2400 East 30 South, Box 312, Beaver, Utah 84713-0312

Mine Name: Sliver 1-2 Permit Number: S/001/035

Utah Mined Land Reclamation Act, Section 40-8-1 et. seq., *Utah Code Annotated (1953)*:

Cessation Order No MC-2005-04-05 dated September 1, 2005

Part 1 of 1 is modified as follows: The abatement date is modified until February 10, 2006. By this date, Mr. Penney is to obtain the rights to mine from Karl Truman or begin reclamation of the mine.

Reason for modification is: In an informal conference dated January 10, 2006, Mr. Penney stated he was in the process of purchasing the mine from Mr. Truman. This extension would allow him time to complete this transaction. If the transaction does not occur, reclamation will commence.

Date of service/mailling: January 18, 2006 Time of service/mailling 3:00 PM ☐ a.m. ☒ p.m.

Date of inspection: June 30, 2005

David Penney

Permittee or Operator Representative

Title

Signature

Thomas Munson

Division of Oil, Gas & Mining Representative

Reclamation Specialist III

Title

Signature

O:\M001-Beaver\S0010035-Sliver1-2\non-compliance\modify-CO-01172006.doc



State of Utah

**Department of
Natural Resources**

MICHAEL R. STYLER
Executive Director

**Division of
Oil, Gas & Mining**

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

February 3, 2006

Mr. David Penney
2400 East 30 South
Box 312
Beaver, Utah 84713-0312

Subject: Extension of Abatement Date, Cessation Orders, Penney's Gemstones, Sliver 1-2, MC-2005-04-05, S/001/035, Beaver County, Utah and Little Spot, MC-2005-04-04, S/027/024, Millard County Utah

Dear Mr. Penney:

This letter is in response to your January 21, 2006 letter, wherein you request a time extension to complete the abatement for the above referenced Cessation Orders. I have discussed your situation with Mary Ann Wright, the Informal Conference Officer and she has agreed to allow you an additional 2 weeks to complete the abatement requirements. You now have until February 24, 2006 to complete the abatement requirements. Enclosed please find the modification notices that provide for the extension. Please pay particular attention to all of the abatement requirements. It is imperative that you complete the requirements as outlined and as discussed in the Informal Conference held on January 10, 2006.

We recognize that some of the requirements may take some time to complete (such as securing additional bond) and encourage you to commence the process of resolving these issues as quickly as possible. Thank you for your cooperation.

If you have any questions regarding this action please contact me at 801-538-5325.

Sincerely,

Daron Haddock
Permit Supervisor
Minerals Regulatory Program

DRH:pb

Attachments: Modifications to CO's

P:\GROUPS\MINERALS\WP\M027-Millard\S0270024-LittleSpot\final\abateextension.doc



JON M. HUNTSMAN, JR.
Governor
GARY R. HERBERT
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director
JOHN R. BAZA
Division Director

Page 1 of 1

MODIFICATION of
Notice of Violation / Cessation Order

To the following Permittee or Operator:

Name: David Penney

Mailing Address: 2400 East 30 South, Box 312, Beaver, Utah 84713-0312

Mine Name: Sliver 1-2 Permit Number: S/001/035

Utah Mined Land Reclamation Act, Section 40-8-1 et. seq., *Utah Code Annotated (1953)*:

Cessation Order No MC-2005-04-05 dated September 1, 2005

Part 1 of 1 is modified as follows: The abatement date is modified until February 24, 2006. By this date, Mr. Penney is to obtain the rights to mine from Karl Truman or begin reclamation of the mine.

Reason for modification is: In an emailed letter received January 25, 2006, Mr. Penney stated he could not meet the deadline of February 7, 2006 imposed because of his being out of town. It should be noted that the actual deadline was February 10, 2006. This extension will allow him 2 additional weeks until February 24, 2006. If he has not completed his transaction with Mr. Truman by this date then immediate reclamation will be required

Date of service/ mailing: February 1, 2006 Time of service/ mailing 3:00 PM ☐ a.m. ☒ p.m.

Date of inspection: June 30, 2005

David Penney
Permittee or Operator Representative Title

Signature

Thomas Munson
Division of Oil, Gas & Mining Representative Title
Reclamation Specialist III

Thomas Munson
Signature

O:\M001-Beaver\S0010035-Sliver1-2\non-compliance\modify-CO-01172006.doc

Deuron



State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

May 10, 2006

CERTIFIED RETURN RECEIPT
7004 2510 0004 1824 3656

Mr. David Penney
2400 East 30 South
Box 312
Beaver, Utah 84713-0312

Subject: Termination of Cessation Orders, Penney's Gemstones, Sliver 1-2, MC-2005-04-05, S/001/035, Beaver County, Utah and Little Spot, MC-2005-04-04, S/027/024, Millard County Utah

Dear Mr. Penney:

Enclosed please find the termination notice for Cessation Orders MC-05-04-05 and MC-05-04-04. The abatement requirements as discussed in the January 10, 2006 informal conference have been satisfied. Now that the Cessation Orders have been terminated, the final assessment of the penalty will be completed by Mary Ann Wright (the informal conference officer). Even though the violations have now been terminated, you will be required to pay the final penalty.

As discussed in our numerous emails to you, there are still some outstanding issues that need to be completed in order for these sites to be in compliance. We have decided to allow you a certain time to resolve these issues before additional enforcement action will be taken. If you fail to complete the requirements you will be subject to other enforcement action, which will include further fines and penalties.

With regard to the Sliver 1-2 mine, you provided a copy of the deposit on the lease, however we are still expecting documentation that the lease has actually been entered into. You also need to amend your Notice of Intent filed with us to include the areas that have been disturbed and that you intend on disturbing by mining operations. You will also need to post a reclamation bond in the amount of \$12,000 and complete a reclamation contract.

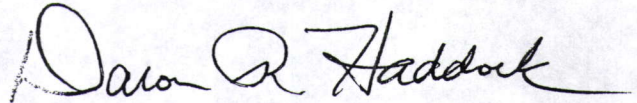
David P. Leary
Page 2 of 2
S/001/035 and S/027/024
March 10, 2006

While we do have the required bond for the Little Spot mine, we have yet to receive the Reclamation Contract, which is required by rule R647-3-111.4. This must be completed prior to you conducting any further mining at the site or removing any material from the site. Please contact Beth Ericksen at (801) 538-5318 for the appropriate paper work for completing the bond and reclamation contracts. You may also email her at bethericksen@utah.gov.

We are hoping to come to a speedy resolution of these outstanding issues. Please understand that if these requirements have not been completed by July 10, 2006 we may issue Notices of Violation or Cessation Orders on these mining operations. You should also understand that **no** mining is to occur at either of these sites until these issues are resolved.

If you have any questions regarding this action please contact me at 801-538-5325.

Sincerely,

A handwritten signature in black ink that reads "Daron R. Haddock". The signature is fluid and cursive, with the first name "Daron" being the most prominent part.

Daron Haddock
Permit Supervisor
Minerals Regulatory Program

DRH:jb
P:\GROUPS\MINERALS\WP\M027-Millard\S0270024-LittleSpot\non-compliance\terminationltr.doc



JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director

JOHN R. BAZA
Division Director

Page 1 of 1

VACATION / TERMINATION of
Notice of Violation / Cessation Order

To the following Permittee or Operator:

Name: David Penney

Mailing Address: 2400 East 30 South, Box 312, Beaver, Utah 84713-0312

Mine Name: Sliver 1-2 Permit Number: S/001/035

Utah Mined Land Reclamation Act, Section 40-8-1 et. seq., *Utah Code Annotated (1953)*:

Notice of Violation No. _____ dated _____, 20 ____

Cessation Order No: MC-2005-04-04(1) dated June 30, 2005

Part 1 of 1 is ☐ vacated ☒ terminated because: The operator has presented evidence to the Division that he has obtained a lease with Mr. Truman as required by the January 10, 2006 Informal conference. Mining operations can not be conducted at the site until the following issues are resolved. The operator must: 1) Provide final documentation that the lease has been entered into. 2) Amend the notice of intent to include the areas that have already been disturbed and areas intended to be disturbed by mining operations. 3) Post a reclamation bond for the current disturbance in the amount of \$12,000 dollars and complete a reclamation contract.

Date of service/ mailing: _____ Time of service/ mailing ☒ a.m. ☒ p.m.

David Penney
Permittee or Operator Representative Title

Signature

Tom Munson
Division of Oil, Gas & Mining Representative Title

Tom Munson
Signature

P:\GROUPS\MINERALS\WP\M001-Beaver\S0010035-Sliver1-2\final\NOV-CO-vacate04262006.doc



State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

July 21, 2006

CERTIFIED MAIL
7004 2510 0004 1824 7784

David Penney
2400 East 30 South
P.O. Box 312
Beaver, Utah 84713-0312

Subject: Findings of Fact, Conclusions, Order and Finalized Assessment for
MC-2005-04-05, Sliver 1-2 Picasso Marble, S001035, Penney's Gemstones,
Beaver County, Utah

Dear Mr. Penney:

On January 10, 2006, an Informal Conference was held to review the fact of violation and proposed assessment for state violation MC- 2005-04-05. As a result of a review of all pertinent data and facts, including those presented in the Informal Hearing and Assessment Conference, the attached documents shall constitute the findings of fact, conclusions, order, and finalized assessment.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties of \$550.00 with the Division within thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, mail c/o Vickie Southwick at the address listed below.

Sincerely,

Mary Ann Wright
Associate Director, Mining
Assessment Conference Officer

Enclosures:

Findings
Final Assessment

P:\GROUPS\MINERALS\WP\M001-Beaver\S0010035-Sliver1-2\draft\Assessment conference ltr.doc

BEFORE THE DIVISION OF OIL, GAS AND MINING
MINERALS REGULATORY PROGRAM
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

---ooOoo---

IN THE MATTER OF THE, Sliver 1	:	INFORMAL CONFERENCE
& 2, Picasso Marble, Beaver		For MC 2005-04-05
COUNTY, UTAH	:	FINDINGS, CONCLUSIONS
		AND ORDER
		CAUSE NO. S/001/035

:
---ooOoo---

On January 10, 2006, the Division of Oil, Gas and Mining ("OGM") held an informal conference concerning the Fact of Violation and the Assessment for Cessation Order, MC-2005-04-05 issued to the Sliver 1 & 2 Mine, Beaver County, Utah. The following individuals attended: Tom Munson and Daron Haddock for the Division.

Presiding: Mary Ann Wright
Associate Director, Mining
Division of Oil, Gas and Mining

Petitioner: David Penney, Penney's Gemstones

The Findings, Conclusions, and Order in this matter are based on information provided by the Petitioner and the Division in connection with this informal conference, and on information in the files of the Division.

FACTS PRESENTED: Fact of the Cessation Order and Assessment

1. On January 10, 2006, the Division of Oil, Gas and Mining (OGM or Division) held an Informal Conference concerning the Cessation Order issued at the Sliver 1 & 2 Mine in Beaver County, Utah.
2. Cessation Order MC-2005-04-05 was issued 9/2/05 for 'Failure to secure a lease for lands affected'.
3. In an email received 12/7/05, Mr. Penney requested an Informal Conference. Notice of the informal conference was properly given, pursuant to Utah Code Ann. Section 40-8-9 and Utah Administrative Rule R647-6-102.

4. At the informal conference, the Petitioner presented the following information to the Conference Officer.
5. Mr. Penney stated that he assumed he was mining on BLM minerals lands instead of patented claims. He further stated that he was going to buy the minerals from the owner and that in the past, he used to lease minerals from the mineral owner.
6. Mr. Penney explained that he needed an extended timeframe to negotiate with the mineral owner. This was provided.
7. The Division represented that the site should be reclaimed if the mineral owner does not grant rights to Penny's Gemstones.
8. Mr. Penney stated that the owner does not want it reclaimed.

CONCLUSIONS

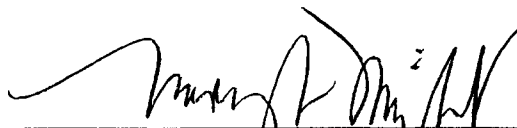
- Mining on patented claims without right of entry likely occurred.
- The Division, the BLM and the patented claim holder all believe the trespass occurred. The fact of the Violation (CO) should stand.
- Facts were presented which were taken into consideration of a reassessment of this cessation order. This was difficult abatement that was accomplished within a very extended time frame. See final assessment worksheet for narrative.

ORDER

NOW THEREFORE, it is ordered that:

- Cessation Order MC-2005-04-05, issued 9-02-05, is hereby affirmed.
- The violation is provided a final assessment as shown in the attached worksheet.
- A fine of \$550.00 is assessed and payable 30 days from receipt of this final assessment.

SO DETERMINED AND ORDERED this 18th day of July 2006



Mary Ann Wright, Associate Director, Mining
Conference Officer
Division of Oil, Gas and Mining
State of Utah

UTAH DIVISION OF OIL, GAS AND MINING
WORKSHEET FOR **FINAL** ASSESSMENT OF PENALTIES

COMPANY: Penney' Gemstones

PERMIT: S/001/035, Sliver 1 & 2, Picasso Marble, Beaver County

VIOLATION: MC-2005-04-05

ASSESSMENT CONFERENCE OFFICER: Mary Ann Wright

	Proposed Assessment	Final Assessment
(1) History/Previous Violations	<u>0</u>	<u>0</u>
(2) Seriousness	(20 +8) <u>28</u>	(15 +4) <u>19</u>
(3) Negligence	<u>8</u>	<u>6</u>
(4) Good Faith	<u>0</u>	<u>0</u>
	Total Points <u>36</u>	<u>25</u>
Proposed Fine: \$ <u>1,760</u>		

TOTAL FINAL ASSESSED FINE \$550.00

NARRATIVE: Permittee conducted mining without right of entry, thus negating the validity of permit. Permittee had no rights to conduct mining activities.

Site damage was relatively small and repairable.

Permittee is aware of responsibility to maintain rights of entry to the site and to the minerals.

This was a difficult abatement to accomplish. However, compliance was achieved within timeframes that were extended several times, so no good faith points were awarded. The Cessation Order was issued on 9/2/2005 and terminated May10, 2006.

(Brief explanation for any changes made in assignment of points and any additional information that was available after the proposed assessment.)

P:\GROUPS\MINERALS\WP\M001-Beaver\S0010035-Sliver1-2\draft\Final Assessmentsliver1-2.doc

U.S. 90-51-8

[illegible][illegible]



JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Oil, Gas & Mining


MICHAEL R. STYLER
Executive Director

JOHN R. BAZA
Division Director

Inspection Report

Minerals Regulatory Program

Report Date: July 19, 2005

Supervisor 

Mine Name: Little Spot
Operator Name: Dave Penney

Permit number: S/027/024
Inspection Date: June 30, 2005
Time: 11:30 AM - 12:30 PM

Inspector(s): Tom Munson, DOGM; Jerry Mansfield, BLM
Other Participants: None
Mine Status: Active

Weather: Sunny

Elements of Inspection	Evaluated	Comment	Enforcement
1. Permits, Revisions, Transfer, Bonds	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Public Safety (shafts, adits, trash, signs, highwalls)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Protection of Drainages / Erosion Control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Deleterious Material	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Roads (maintenance, surfacing, dust control, safety)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Concurrent Reclamation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Backfilling/Grading (trenches, pits, roads, highwalls, shafts, drill holes)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
8. Water Impoundments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Soils	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Revegetation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Air Quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Other	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Purpose of Inspection:

The BLM requested a joint inspection with the Division to determine the extent of the mine disturbance and the adequacy of the reclamation bond.

Inspection Summary:

- 1.) Permits. The current small mine permit does not adequately address the large mine status of the operation. The small mine permit was received 5/14/1990 and was determined complete on 5/14/1990. The Bureau of Land Management holds \$9,800 reclamation surety allocated through a nationwide bond. The site is mostly disturbed but an area that has been graded will need to be scarified and seeded this fall.
- 7.) Backfilling. There is a large pit, several stockpiles and obsidian picking areas. The stockpiles are both product and reject material that will have to be removed from the site or be pushed back into the pit.
- 12.) Other. The site had a semi-trailer loaded with boxes of obsidian and a small crawler and buckets of picked obsidian.

Inspection Date: July 7, 2005; Report Date: July 19, 2005
Page 2 of 2
S/003/048

Conclusions and Recommendations:

The Division will be required to issue a cessation order and request an interim bond until the mine is permitted as a large mine or reclaimed.

Inspector's Signature Tom Munson Date: July 19, 2005

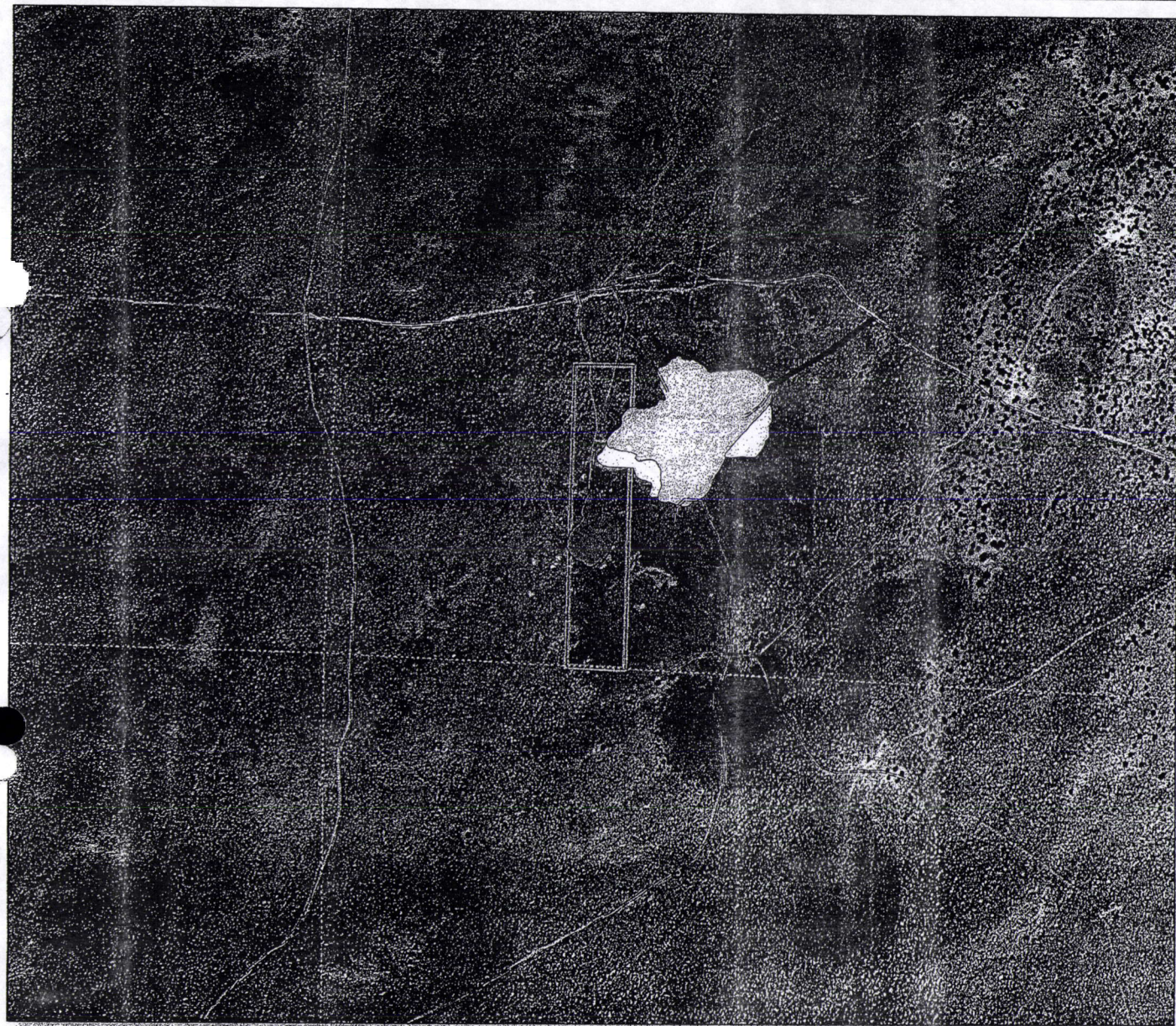
TM:jb

Attachment: GPS

cc: Dave Penney, Operator

Jerry Mansfield, BLM, Fillmore FO

O:\M027-Millard\S0270024-LittleSpot\inspections\06302005.doc



Mine Number: S270024
Mine Name: Little Spot
Township 24 S Range 09 W

Section 22 SLBM

Inspection Date June 30, 2005
 Map Produced by DKS

Acres Disturbed	7.38
Acres Regraded	1.37
Acres Seeded	0

Total Acres Disturbed	8.75
-----------------------	------

Acres Reclaimed	0
Acres Excluded	0
Acres Prelaw	1.35

Legend
 All items symbolized in legend may not be appear on map

- | | |
|-----------------|---|
| County Boundary | Township or range Line |
| Access | Township or range line, location doubtful |
| Mine | Section line |
| NonMine | Section line, location doubtful |
| Other | Disturbed |
| Interstate | Regraded |
| US Route | Seeded |
| State Route | Reclaimed |
| Primary Route | Excluded |
| Secondary Route | Prelaw |
| Main Dirt Road | Mine Permit |
| Unimproved Road | |
| Interchange | |
| Trail | |

DOQ imagery date 1998



0 250 500

Feet
 Scale 1:6,000 (verify scale)
 1 inch = 500 feet

Dept. of Natural Resources
 Division of Oil, Gas, and Mining
 Mineral Mines Program

Different data sources and input scales
 may cause misalignment of data layers.
 This product may not meet DOGM
 standards for accuracy and content.



JON M. HUNTSMAN, JR.
Governor
GARY R. HERBERT
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director
JOHN R. BAZA
Division Director

Page 1 of 3

Cessation Order ☒ No. MC-2005-04-04

CERTIFIED RETURN RECEIPT # 7002 0510 0003 8603 3288

To the following Permittee or Operator:

Permittee/Operator Name: Penney's Gemstones

Mine Name: Little Spot ☒ Surface ☐ Underground ☐ Other

County: Millard State: Utah Telephone Number: (435) 438-5522

Business Address: 2400 East 30 South, Box 312, Beaver, Utah 84713-0312

Permit Number: S/027/024

Ownership Category: ☐ State ☒ BLM ☐ USFS ☐ Fee ☐ Other

Date of Inspection: July 7, 2005 Time: 11:30 ☒ a.m. ☐ p.m. to 12:30 ☐ a.m. ☒ p.m.

Under authority of the Utah Mined Land Reclamation Act, Section 40-8-1 et seq., *Utah Code Annotated*, 1953, the undersigned authorized representative of the Division of Oil, Gas, and Mining has conducted an inspection of above mine on above date and has found that a Notice of Violation or Cessation Order must be issued with respect to the conditions, practices, or violations listed. In accordance with Section 40-8-9, *Utah Code Annotated*, you are ordered to cease immediately the operations or activity described and to perform the required actions described within the designated time for abatement.

The undersigned representative finds that this order ☒ does require cessation of all mining;
☐ does not require cessation of all mining.

For this purpose, "mining" means development of, or extraction of a mineral deposit, including transportation within or from the mine site, concentrating, milling, evaporation, or other processing. Mining and/or reclamation operations not directly the subject of this order shall continue while this order is in effect. You are responsible for doing all work in a safe and workmanlike manner.

This order shall remain in effect until it is modified, terminated or vacated by written notice of an authorized representative of the director of the Division of Oil, Gas, and Mining.

Date of service/mailling: Aug 2, 2005 Time of service/mailling 10:30 ☒ a.m. ☐ p.m.

Permittee or Operator Representative

Title

Signature

Tom Munson

Division of Oil, Gas & Mining Representative

Reclamation Specialist III

Title

Tom Munson
Signature

SEE REVERSE SIDE

1. PENALTIES.

a. **Proposed assessment.** The Division of Oil, Gas, and Mining (DOGM) assesses fines based upon a proposed assessment recommended by an assessment officer. You may submit written information pertaining to violation(s) covered by this order within 15 days of the date this notice or order is served on you or your agent. Information will be used by the assessment officer in determining facts surrounding the violation(s) and amount of penalty. A representative of the DOGM will serve the proposed assessment on you or your agent within 30 days of issuance of notice or order.

b. **Assessment.** The penalty will be final unless you or your agent file a written request within 15 days of receipt of proposed assessment for an informal hearing before the assessment officer.

For each violation included in this notice, a penalty of up to \$5,000 may be assessed for each separate day the violation continues.

If you fail to abate any violation within the time set for abatement or for meeting any interim step, you will be assessed an additional minimum penalty of \$750 for each day of continuing violation beyond the time set for abatement. In addition, if you fail to abate any violation as required you will be issued a Cessation Order requiring you to cease mining operations on the portion of the operations relevant to the violation.

2. STOP WORK CONFERENCE.

A Stop Work Conference may be requested if this notice requires cessation of all mining. On the reverse of this page, the authorized representative has made a finding as to whether or not this notice requires cessation of all mining. (See Utah Admin. R. 647-6-102.4 et seq.)

You must request the Stop Work Conference within 30 days after service of this Cessation Order. The conference must be held within 5 days of your request. You will be notified of the date, time, and location of the conference.

Please send your conference request to:
Administrative Secretary
Associate Director of Mining
1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801

3. FORMAL REVIEW AND TEMPORARY RELIEF.

You may apply for review of this notice, order or proposed assessment before the Board of Oil, Gas, and Mining by submitting an application for hearing within 30 days of receipt of notice or assessment by you or your agent. Apply to:

Secretary
Board of Oil, Gas, and Mining
1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801

If applying for a formal board hearing, you may submit with your petition for review a request for temporary relief from this notice. Procedures for obtaining a formal board hearing are contained in the board's Rules of Practice and Procedure and in Utah Admin. R. 647-5 et seq.

4. INDIVIDUAL CIVIL PENALTIES.

An additional individual civil penalty of up to \$5000 per day may be assessed against any corporate director, officer, or agent who knowingly and willfully authorized, ordered or carried out a violation or who fails or refuses to comply with an order.

For further information, consult *Utah Code Annotated* Section 40-8-9, 9.1, Utah Admin. R. 647-6, 7, 8 seq. or contact the Division of Oil, Gas, and Mining at (801) 538-5304.

Cessation Order NO. MC-2005-04-04

Violation No. 1 of 1

Page 3 of 3

Nature of condition, practice, or violation:

Failure to obtain a large mining permit prior to expanding operations beyond 5(five) acres.

Provisions of act, regulations, or permit violated: R647-3-113

(Check box if appropriate:)

☐ Condition, practice, or violation is creating an imminent danger to health or safety of the public.

☒ Permittee/Operator is/has been conducting mining activities without a permit.

☒ Condition, practice, or violation is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

☐ Permittee or Operator has failed to abate Violation(s) No. _____ included in Notice of Violation No. or Cessation Order No. M _____ within time for abatement originally fixed or subsequently extended.

Mining activity to be ceased immediately:

All mining related activities outside the five-acre small mine permit area.

Affirmative obligation(s) or required action and abatement time (if applicable):

- 1.) By August 15, 2005 post a \$40,000 reclamation surety for the existing disturbance with the Division.
- 2.) By August 15, 2005 mark the five-acre small mine area where operations will continue, if you intend to maintain a small mine.
- 3.) By August 15, 2005 provide a map with sufficient detail to show the location and delineate the five-acre area where operations will continue.
- 4.) By October 15, 2005, complete an NOI for a large mine which will encompass the area disturbed. Mining operations may not resume outside the five acre small mine area until the large mine notice is approved.
- 5.) As an alternative, you may submit plans to reclaim the area down to a five acre-site, thus retaining the site as a small mine. With this alternative, you would still need to provide the map and post the surety until the reclamation work is completed and released. Please notify the division by August 15, 2005 if you elect to use this alternative.

jb

cc: DOGM
Operator
File

O:\M027-Millard\S0270024-LittleSpot\non-compliance\CO-MC2005-04-04.doc



State of Utah

**Department of
Natural Resources**

MICHAEL R. STYLER
Executive Director

**Division of
Oil, Gas & Mining**

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

9/6/2005

TO: Minerals File

FROM: Tom Munson, Senior Reclamation Hydrologist

SUBJECT: Posting of CO# MC-2005-04-04, Penney's Gemstones, Little Spot Mine, S/027/024, Millard County, Utah

Date NOV/CO Posted: August 31, 2005
Time of Posting: 1:00 p.m.
Place of Posting: Center of Mine site
Conditions: Sunny
Participants: Tom Munson, DOGM

This memo is to document that Cessation Order MC-2005-04-04 issued to Penney's Gemstones, was posted at the site. Photo documentation accompanies this memo.

No one was at the site when we arrived.

Signed by: Tom Munson
DOGM Representative

O:\M027-Millard\S0270024-LittleSpot\non-compliance\NOV-CO-service-memo.doc



JON M. HUNTSMAN, JR.
Governor
GARY R. HERBERT
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director

JOHN R. BAZA
Division Director

Page 1 of 1

MODIFICATION of
Notice of Violation / Cessation Order

To the following Permittee or Operator: CRR-7002-0510 0003 8603 4186

Permittee/Operator Name: Penney's Gemstones

Business Address: 2400 East 30 South, Box 312, Beaver, Utah 84713-0312

County: Millard State: Utah Telephone Number: (435) 438-5522

Mine Name: Little Spot Permit Number: S/027/024

Utah Mined Land Reclamation Act, Section 40-8-1 et. seq., *Utah Code Annotated (1953)*:

Notice of Violation No. _____ dated _____, 20 _____

Cessation Order No: MC-2005-04-04 dated August 2, 2005

Part 1 of 1 is modified as follows: All abatement deadlines showing August 15, 2005 (items 1, 2, 3, and 5) are extended to September 30, 2005.

Reason for modification is: The original Cessation Order was issued by Certified Mail, August 2, 2005, which was refused by operator. Cessation Order was then posted on site August 31, 2005 and mailed to operator to complete service.

Date of service/mailling: September 2, 2005

Time of service/mailling 10:30 a.m.

Date of inspection: July 7, 2005

David Penney

Permittee or Operator Representative

Title

Signature

Tom Munson

Division of Oil, Gas & Mining Representative

Senior Reclamation Hydrologist

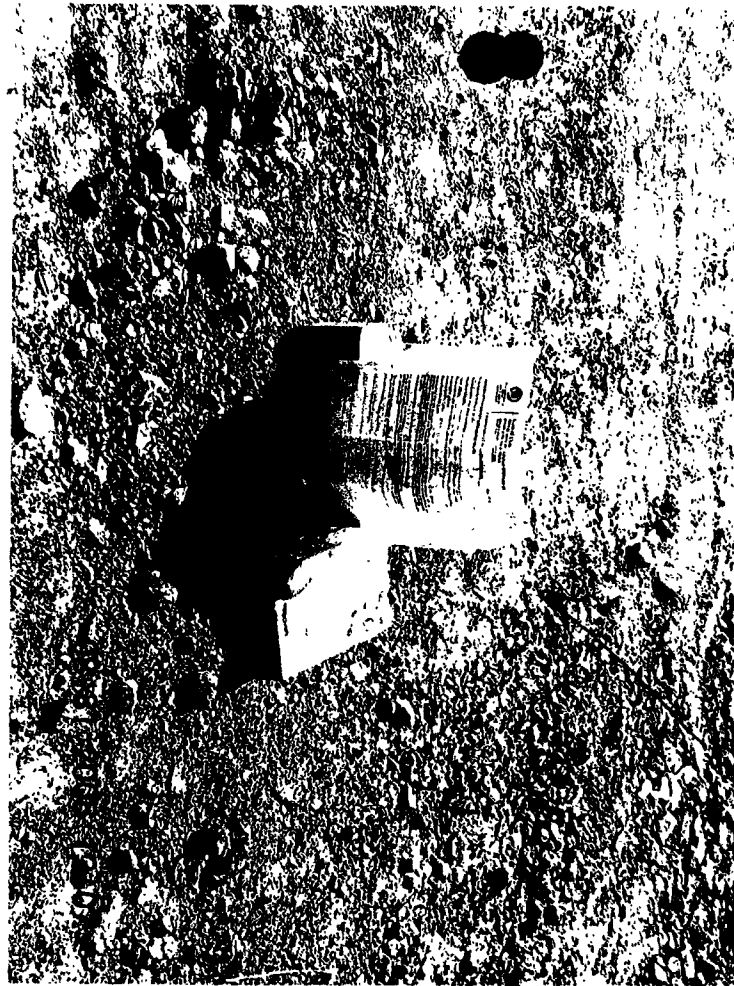
Title

Signature

O:\M027-Millard\S0270024-LittleSpot\non-compliance\CO-modify.doc

Enclosure - CO dated 8/2/05

CC: BLM, Cedar City



CO POSTED ON SITE

INSPECTION08312005 007.JPG 2005/08/31 13:07:04



INSPECTION08312005 008.JPG 2005/08/31 13:07:51



DISTURBANCE UNCHANGED FROM
LAST INSPECTION

INSPECTION08312005 009.JPG 2005/08/31 13:07:53



INSPECTION08312005 010.JPG 2005/08/31 13:07:59

5/027/024
5/001/03500

PENNEY'S GEMSTONES

P.O. Box 312
Beaver, UT 84713

9/30/2005

State of Utah
DOGM
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, UT 84114-5801
Attn: Tom Munson

RECEIVED
SEP 30 2005
DIV OF OIL GAS & MINING

Dear Tom,

Due to our extended absence from the State of Utah, we have been unable to receive mail. We want to follow your suggestion to obtain certified reseeding in the fall, as we discussed in our meeting with you this spring.

We will be able to complete the requested reclamation requirements (reseeding and harrowing) upon our return with equipment to the State this fall.

We apologize for any inconveniences.

Sincerely,

David L. Penney



State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

September 27, 2005

CERTIFIED RETURN RECEIPT
7002 0510 0003 8603 3080

Mr. David Penney
2400 East 30 South
Box 312
Beaver, Utah 84713-0312

Subject: Proposed Assessment for Cessation Order MC-2005-04-04, David Penney, Little Spot Mine, S/027/024, Millard County, Utah

Dear Mr. Penney:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division Inspector, Tom Munson, on August 2, 2005. Rule R647-7-103 et. seq. has been utilized to formulate the proposed penalty for the violation as follows:

- MC-2005-04-04— Violation 1 of 1 \$1760

The enclosed worksheet specifically outlines how the violation was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the violation and the amount of penalty. If the violation has not been abated at the time of the proposed assessment, the assignment of good faith points cannot be made. If you feel that you are eligible for good faith, you should supply relevant information to the assessment officer within 15 days of the violation abatement date so that it can be factored into the final assessment.

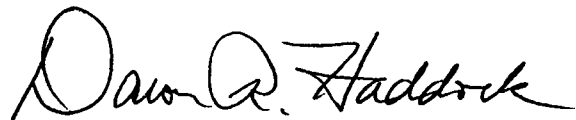
David Penney
Page 2 of 6
S/027/024
September 27, 2005

Otherwise, under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director or Associate Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the final assessment. Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Daron R. Haddock
Assessment Officer

Enclosure: Worksheets

cc: Vickie Southwick, Exec. Sec.
Vicki Bailey, Accounting

O:\M027-Millard\S0270024-LittleSpot\non-compliance\proAssessment-CO.doc

WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING
Minerals Regulatory Program

COMPANY / MINE Penney's Gemstones/ Little Spot Mine PERMIT S/027/024

NOV / CO # MC-2005-04-04

VIOLATION 1 of 1

ASSESSMENT DATE September 27, 2005

ASSESSMENT OFFICER Daron R. Haddock

I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

TOTAL HISTORY POINTS 0

II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

*** *An Operator is required to obtain a permit from the Division of Oil Gas and Mining prior to conducting mining operations. Acreage outside the small mine permit area has been disturbed at this location without revising the permit to do so. While the Operator has a permit for a small mine, which allowed disturbance up to 5 acres, the operation has expanded to 8.75 acres. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector stated that the operator has disturbed approximately 3.75 acres of land that had not been approved for disturbance. The damage was the loss of vegetation and soil resources from the area disturbed. Further discussion with the inspector revealed that the damage is probably temporary. While the soil and vegetation have been disturbed, the site could still be reclaimed. Even though the damage is extensive over the property, it probably does not leave the site of disturbance. Damage is assessed in the lower 1/3 of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? _____
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS _____

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 28

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector indicated that the violation was the result of the Operator not taking reasonable care in keeping track of the acreage disturbed. Approximately 3.75 acres of disturbance beyond that allowed by the small mine permit has occurred. This indicates indifference to the rules or misunderstanding of the rules. A prudent operator would understand the need to keep within the approved boundaries and obtain approval prior to disturbing an area. The Operator was negligent in this regard, thus the assignment of points in the middle part of the negligence range.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

X	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
X	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	
X	Normal Compliance	0
	(Operator complied within the abatement period required)	
	(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)	

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- | | | |
|---|---|-------------|
| X | Rapid Compliance | -11 to -20* |
| | (Permittee used diligence to abate the violation) | |
| X | Normal Compliance | -1 to -10* |
| | (Operator complied within the abatement period required) | |
| X | Extended Compliance | 0 |
| | (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete) | |
| | (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan) | |

EASY OR DIFFICULT ABATEMENT? Difficult

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

*** *The abatement has not yet been completed, so good faith points cannot be awarded at this time. This category will be looked at again after the abatement has been completed. Points will be awarded depending on how quickly the abatement is met.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MC-05-04-04</u>	
I.	TOTAL HISTORY POINTS <u>0</u>
II.	TOTAL SERIOUSNESS POINTS <u>28</u>
III.	TOTAL NEGLIGENCE POINTS <u>8</u>
IV.	TOTAL GOOD FAITH POINTS <u>-</u>
	TOTAL ASSESSED POINTS <u>36</u>
TOTAL ASSESSED FINE <u>\$ 1,760</u>	



JON M. HUNTSMAN, JR.
Governor
GARY R. HERBERT
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER JOHN R. BAZA
Executive Director Division Director

Inspection Report
Minerals Regulatory Program
December 5, 2005

Supervisor ARZ

Mine Name: Little Spot
Operator Name: Penney's Gemstones, LLC

Permit number: M/027/024
Inspection Date: December 1, 2005
Time: 9:15am

Inspector(s): Lynn Kunzler, DOGM
Other Participants: David Penny and Sarah Scholz, Operator
Mine Status: Active

Weather: Partly cloudy, windy

Elements of Inspection	Evaluated	Comment	Enforcement
1. Permits, Revisions, Transfer, Bonds	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Public Safety (shafts, adits, trash, signs, highwalls)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Protection of Drainages / Erosion Control	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Deleterious Material	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Roads (maintenance, surfacing, dust control, safety)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Concurrent Reclamation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Backfilling/Grading (trenches, pits, roads,	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Soils	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Revegetation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Purpose of Inspection:

At the request of the operator - to assure reclamation work is properly completed to abate violation.

Inspection Summary:

- Mr. Penney had obtained a seed mix for revegetation of the Little Spot from the BLM (surface owner). Seed was broadcast at the appropriate rate over 4 acres (as determined from GPS survey). Most of the area was left with a rough (moonscape) surface. A small portion (approx. 1 acre) on top of the knob was relatively smooth, but had incorporated a gravel mulch that was effectively keeping the seed from blowing away.

A small pit to the southwest had previously been considered by the Division as part of this operation. However, Mr. Penney indicated that the pit was there prior to his 1972 start-up. Vegetation on top of the dumps would support that this site is pre-law and should not be considered part of his active operation.

Conclusions and Recommendations:

- With four acres reclaimed, there is approximately 5 acres left as part of the active operations for this site. With exception of the reclamation surety, all other abatement work has been completed that was required by the cessation order.

Inspector's Signature [Signature]

LK:jb

cc: Dave Penney, Operator
Tom Munson, DOGM

O:\M027-Millard\0270024-LittleSpot\inspections\insp-12012005.doc

Date: December 5, 2005



JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director

JOHN R. BAZA
Division Director

Page 1 of 1

MODIFICATION of
Notice of Violation / Cessation Order

To the following Permittee or Operator:

Name: David Penney

Mailing Address: 2400 East 30 South, Box 312, Beaver, Utah 84713-0312

Mine Name: Little Spot Permit Number: S/027/024

Utah Mined Land Reclamation Act, Section 40-8-1 et. seq., *Utah Code Annotated (1953)*:

Cessation Order No MC-2005-04-04(1) dated September 2, 2005

Part 1 of 1 is modified as follows: The abatement deadline is extended until January 24, 2006.

Reason for modification is: In light of the difficulties in completing the necessary paperwork for bonding, the operator has requested an informal conference which will occur on January 10, 2006 at 11AM. Therefore, abatement timeframe has been extended to allow for this hearing to occur regarding these issues and a decision to be rendered regarding the abatement of the cessation order following this hearing.

Date of service/ mailing: December 8, 2005 Time of service/ mailing 3:00 ☒ p.m.

Date of inspection: June 30, 2005

Tom Munson
Division of Oil, Gas & Mining Representative

Senior Reclamation Specialist
Title

Tom Munson

Signature

O:\M027-Millard\S0270024-LittleSpot\non-compliance\NOV-CO-modify-1282005.doc



State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

JON M. HUNTSMAN, JR.
Governor

MICHAEL R. STYLER
Executive Director

JOHN R. BAZA
Division Director

GARY R. HERBERT
Lieutenant Governor

Page 1 of 1

MODIFICATION of

Notice of Violation / Cessation Order

Certified Return Receipt: 7004 2510 0004 1824 3557

To the following Permittee or Operator:

Name: David Penney

Mailing Address: 2400 East 30 South, Box 312, Beaver, Utah 84713-0312

Mine Name: Little Spot Permit Number: S/027/024

Utah Mined Land Reclamation Act, Section 40-8-1 et. seq., *Utah Code Annotated (1953)*:

Cessation Order No MC-2005-04-04 dated September 1, 2005

Part 1 of 1 is modified as follows:

The abatement date is modified to February 10, 2006. By this date, Mr. Penney is to do the following:

1.) Post \$8,800 additional bond (in addition to the \$9800 bond posted with the BLM) to cover 5 acres of disturbance and put Division of Oil, Gas, and Mining on all bonding instruments. In addition, fill out a Reclamation Contract and attach an accurate map.

2.) Mark the five acres of disturbance on the ground with fence posts or equivalent.

3.) Provide an accurate legal description for the disturbance.

Reason for modification is: While Mr. Penney has completed seeding of area surrounding the disturbance, he has not submitted an adequate surety to cover the remaining disturbance nor has he completed all the permitting requirements of the site according to the Small Mine rules. This modification will allow the time necessary to complete the requirements in accordance with the agreements made during the informal conference held January 10, 2006.

Date of service/mailling: January 18, 2006 Time of service/mailling 3:00 PM ☐ a.m. ☒ p.m.

Date of inspection: June 30, 2005

David Penney
Permittee or Operator Representative

Title

Signature

Thomas Munson
Division of Oil, Gas & Mining Representative

Reclamation Specialist III
Title

Thomas Munson
Signature

O:\M027-Millard\S0270024-LittleSpot\non-compliance\CO-modify-01182006.doc



JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Oil, Gas & Mining

MICHAEL R. STYLER
Executive Director

JOHN R. BAZA
Division Director

Page 1 of 1

MODIFICATION of
Notice of Violation / Cessation Order

To the following Permittee or Operator:

Name: David Penney

Mailing Address: 2400 East 30 South, Box 312, Beaver, Utah 84713-0312

Mine Name: Little Spot Permit Number: S/027/024

Utah Mined Land Reclamation Act, Section 40-8-1 et. seq., *Utah Code Annotated (1953)*:

Cessation Order No MC-2005-04-04 dated September 1, 2005

Part 1 of 1 is modified as follows:

The abatement date is modified to February 24, 2006. By this date, Mr. Penney is to do the following:

- 1.) Post \$8,800 additional bond (in addition to the \$9800 bond posted with the BLM) to cover 5 acres of disturbance and put Division of Oil, Gas, and Mining on all bonding instruments. In addition, fill out a Reclamation Contract and attach an accurate map.
- 2.) Mark the five acres of disturbance on the ground with fence posts or equivalent.
- 3.) Provide an accurate legal description for the disturbance.

Reason for modification is: Mr. Penney requested this extension because he will be out of town. This extension request was received by email on January 25, 2006. While Mr. Penney has completed seeding of area surrounding the disturbance, he has not submitted an adequate surety to cover the remaining disturbance nor has he completed all the permitting requirements of the site according to the Small Mine rules. This modification will allow the time necessary to complete the requirements in accordance with the agreements made during the informal conference held January 10, 2006.

Date of service/ mailing: February 1, 2006 Time of service/ mailing 3:00 PM ☐ a.m. ☒ p.m.

Date of inspection: June 30, 2005

David Penney

Permittee or Operator Representative

Title

Signature

Thomas Munson

Division of Oil, Gas & Mining Representative

Reclamation Specialist III

Title

Signature



State of Utah

**Department of
Natural Resources**

MICHAEL R. STYLER
Executive Director

**Division of
Oil, Gas & Mining**

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

July 21, 2006

CERTIFIED MAIL
7004 2510 0004 1824 7777

David Penney
2400 East 30 South
P.O. Box 312
Beaver, Utah 84713-0312

Subject: Findings of Fact, Conclusions, Order and Finalized Assessment for
MC-2005-04-04, Little Spot, S027024, Penney's Gemstones, Millard County, Utah

Dear Mr. Penney:

On January 10, 2006, an Informal Conference was held to review the fact of violation and proposed assessment for state violation MC- 2005-04-04. As a result of a review of all pertinent data and facts, including those presented in the Informal Hearing and Assessment Conference, the attached documents shall constitute the findings of fact, conclusions, order, and finalized assessment.

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties of \$770.00 with the Division within thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, mail c/o Vickie Southwick at the address listed below.

Sincerely,

Mary Ann Wright
Associate Director, Mining
Assessment Conference Officer

VS
Enclosures:

Findings

Final Assessment

BEFORE THE DIVISION OF OIL, GAS AND MINING
MINERALS REGULATORY PROGRAM
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

---ooOoo---

IN THE MATTER OF THE, Little	:	INFORMAL CONFERENCE
Spot Mine, Millard COUNTY, UTAH	:	For MC 2005-04-04
	:	FINDINGS, CONCLUSIONS
	:	AND ORDER
	:	CAUSE NO. S/027/024

---ooOoo---

On January 10, 2006, the Division of Oil, Gas and Mining ("OGM") held an informal conference concerning the Fact of Violation and the Assessment for Cessation Order, MC-2005-04-04 issued to the Little Spot Mine, Millard County, Utah. The following individuals attended: Tom Munson and Daron Haddock for the Division.

Presiding: Mary Ann Wright
Associate Director, Mining
Division of Oil, Gas and Mining

Petitioner: David Penney, Penney's Gemstones

The Findings, Conclusions, and Order in this matter are based on information provided by the Petitioner and the Division in connection with this informal conference, and on information in the files of the Division.

FACTS PRESENTED: Fact of the Cessation Order and Assessment

1. On January 10, 2006, the Division of Oil, Gas and Mining (OGM or Division) held an Informal Conference concerning the Cessation Order issued at the Little Spot Mine in Millard County, Utah.
2. Cessation Order MC-2005-04-04 was issued 8/2/05 for 'Failure to obtain a large mining permit prior to expanding beyond 5 acres'.
3. In an email received 12/7/05, Mr. Penney requested an Informal Conference. Notice of the informal conference was properly given. Pursuant to Utah Code Ann. Section 40-8- 9 and Utah Administrative Rule R647-6-102.

4. At the informal conference, the Petitioner presented the following information to the Conference Officer.
5. Mr. Penney stated that he was out in the spring of 2005 with Tom Munson and believed that he had been advised to stay away from the roughened area, the area he had mined and "scraped up" or roughened. He then assumed that the mine had been reduced to under 5 acres via this grading. He also stated that he liked the idea of 'letting it seed naturally'.
6. Mr. Penney contended that the disturbance, according to his map, was under 5 acres. He was using some of the area for stockpiling materials which have value. Mr. Penney has a nationwide bond posted for this site through the BLM. He wondered 'why it should be so hard to be competitive' in this business and 'why burden people who have done a good job.'
7. Mr. Munson pointed out that he had explained the requirements in the spring concerning expanding beyond 5 acres.
8. The Division represented that maps on file with the small mine permit are not adequate, that the Division needs to be named on the bond, and the disturbance needs to be marked in the field with T-posts.

CONCLUSIONS

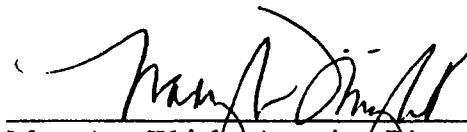
- Mining outside of the boundary area likely occurred. There was not a reclamation surety posted with the state of Utah. The Fact of the Violation (CO) should stand.
- Facts were presented which were taken into consideration of a reassessment of this cessation order. This was difficult abatement that was accomplished within a very extended time frame. See final assessment worksheet for narrative.

ORDER

NOW THEREFORE, it is ordered that:

1. Cessation Order MC-2005-04-04, issued 8-02-05, is hereby affirmed.
2. The violation is provided a final assessment as shown in the attached worksheet.
3. A fine of \$770.00 is assessed and payable 30 days from receipt of this re-assessment.

SO DETERMINED AND ORDERED this 18th day of July 2006



Mary Ann Wright, Associate Director, Mining
Conference Officer
Division of Oil, Gas and Mining
State of Utah

UTAH DIVISION OF OIL, GAS AND MINING
WORKSHEET FOR FINAL ASSESSMENT OF PENALTIES

COMPANY: Penney' Gemstones
PERMIT: S/027/024, Little Spot, Millard County
VIOLATION: MC-2005-04-04

ASSESSMENT CONFERENCE OFFICER: Mary Ann Wright

	Proposed Assessment	Final Assessment
(1) History/Previous Violations	<u>0</u>	<u>0</u>
(2) Seriousness	(20 + 8) <u>28</u>	(15 + 4) <u>19</u>
(3) Negligence	<u>8</u>	<u>8</u>
(4) Good Faith	<u>0</u>	<u>0</u>
Total Points	<u>36</u>	<u>27</u>

Proposed Fine:\$ 1,760

TOTAL Final ASSESSED FINE \$770.00

NARRATIVE: Conducting mining outside of the small mine permit area, in an area more than one and one half times the permitted 5 acres. Damage occurred but was relatively small and repaired by grading and seeding.

Permittee was aware the permit was only for 5 acres and mined outside the permit area.. This was a difficult abatement to accomplish, which was the posting of \$8,800 bond, marking the 5-acre permit area, and providing an accurate legal description and map. Compliance was achieved within timeframes that were extended several times, so no good faith points were awarded in the final assessment. The Cessation Order was issued on 8/2/05 and terminated May 2006.

(Brief explanation for any changes made in assignment of points and any additional information that was available after the proposed assessment.)

DAVID L. PENNEY

P.O. Box 312
Beaver, UT 84713
(435)438-5522
fax (435)438-2555
ep7@nmission.com

FILED

DEC 11 2006

SECRETARY, BOARD OF
OIL, GAS & MINING

December 6, 2006

State of Utah
Office of the Attorney General
1594 West North Temple
#300
Salt Lake City, UT 84116
Attn: Michael S. Johnson

RE: Possible appeal to Board of Oil, Gas, and Mining

Dear Mr. Johnson,

The matter that I am appealing is

- 1.) The final assessment of penalty of cessation orders (MC-05-04-05 MC-05-04-04, that have been terminated.)
- 2.) I am objecting to the issuance of any of the cessation orders.
- 3.) I am objecting the false accusations of my actions and my character.

My letter dated August 10, 2006, was my written appeal request to Oil, Gas and Mining. I will be sending an amended version of this appeal in a separate form to the Secretary.

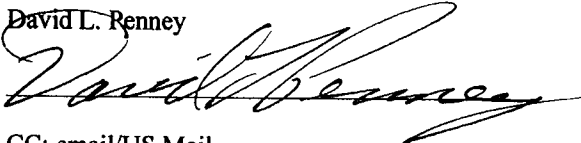
I find it appropriate to represent myself since all letters pertaining to these orders have been directed to David L. Penney (Natural Person). Therefore I have the choice of representation.

I am not happy about the checks that I requested to be held in escrow, which were enclosed in my Aug. 10 letter to have been deposited. I would like the money returned until this issue is resolved.

I would like to request an extension of time due to my yearly absence until May 2007. Please forward this response to anyone else that may need a copy.

Sincerely,

David L. Penney



CC: email/US Mail

Secretary for the Board of Oil, Gas, and Mining
Mary Ann Wright

RECEIVED

DEC 11 2006

DIV. OF OIL, GAS & MINING

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

---oo0oo---

IN THE MATTER OF THE REQUEST FOR	:	NOTICE OF HEARING
AGENCY ACTION OF DAVID L. PENNEY		
TO APPEAL THE CESSATION ORDERS AND	:	
PENALTIES ISSUED BY THE DIVISION OF		DOCKET NO. 2007-002
OIL, GAS AND MINING FOR THE LITTLE	:	CAUSE NOS. S/027/024 &
SPOT MINE IN MILLARD COUNTY AND THE		S/001/035
SLIVER 1-2 MINE IN BEAVER COUNTY,	:	
UTAH.		

---oo0oo---

THE STATE OF UTAH TO ALL PERSONS INTERESTED IN THE FOLLOWING
MATTER.

Notice is hereby given that the Board of Oil, Gas and Mining ("Board"), State of Utah, will conduct a hearing on WEDNESDAY, MAY 23, 2007, at 10:00 AM, or as soon thereafter as possible, in the Board Room of the Department of Natural Resources, 1594 West North Temple, Suite 1050, Salt Lake City, Utah.

The hearing will be conducted as a formal administrative adjudication in accordance with the rules of the Board as set forth in Utah Administrative Code R641 *et seq.* as provided for by Utah Code Ann. § 40-8-1 *et seq.* and Utah Code Ann. § 63-46b-1 *et seq.*

The purpose of the proceeding will be for the Board to receive testimony and evidence regarding an appeal by David L. Penney to the issuance of cessation orders and penalties for the Little Spot Mine in Millard County and the Sliver 1-2 Mine in Beaver County, Utah. The Little Spot Mine was issued Cessation Order MC-2005-04-04 on August 2, 2005, and the Sliver 1-2 Mine was issued Cessation Order MC-2005-04-05 on September 2, 2005.

Objections to the Request for Agency Action must be filed with the Secretary of the Board at the address listed below no later than the 10th day of the month, or two weeks before the scheduled hearing, whichever is earlier. A party must file a timely written objection or other response in order to participate as a party at the Board hearing.

Natural persons may appear and represent themselves before the Board. All other representation by parties before the Board will be by attorneys licensed to practice law in the State of Utah, or attorneys licensed to practice law in another jurisdiction which meet the rules of the Utah State Bar for practicing law before the Utah Courts.

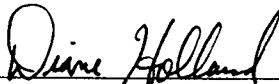
Page 2
Notice of Hearing
Docket No. 2007-002

Persons interested in this matter may participate pursuant to the procedural rules of the Board. The Request for Agency Action, and any subsequent pleadings, may be inspected at the office of the undersigned.

Pursuant to the Americans with Disabilities Act, persons requiring auxiliary communicative aids and services to enable them to participate in this hearing should call Julie Carter at (801) 538-5277, at least three working days prior to the hearing date.

DATED this 26th day of April, 2007.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING
Douglas E. Johnson, Chairman



/s/ Diane Holland
Legal Secretary
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84116
(801) 538-5302

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing NOTICE OF HEARING for Docket No. 2007-002, Cause Nos. S/027/024 & S/001/035 to be mailed with postage prepaid, this 1st day of May, 2007, to the following:

CERTIFIED MAIL

7005 1820 0000 1456 8987

David L. Penney

P.O. Box 312

Beaver, UT 84713

Michael S. Johnson, Esq.

Assistant Attorney General

Utah Board of Oil, Gas & Mining

1594 West North Temple, Suite 300

Salt Lake City, UT 84116

(Hand Delivered)

Steven F. Alder, Esq.

Assistant Attorney General

Utah Division of Oil, Gas & Mining

1594 West North Temple, Suite 300

Salt Lake City, UT 84116

(Hand Delivered)



CERTIFICATE OF PUBLISHED NOTICE

I hereby certify that I caused a true and correct copy of the foregoing NOTICE OF HEARING for Docket No. 2007-002, Cause Nos. S/027/024 & S/001/035 to be PUBLISHED in the following newspapers on the following days:

May 6, 2007:

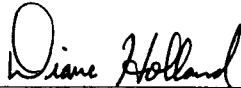
The Salt Lake Tribune and Deseret Morning News, newspapers of general circulation in Salt Lake City and County.

May 2, 2007:

Millard County Chronicle Progress, a newspaper of general circulation in Millard County.

May 3, 2007:

Beaver Press, a newspaper of general circulation in Beaver County.



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DAVID L PENNEY
P O BOX 312
BEAVER UT 84713

COMPLETE THIS SECTION ON DELIVERY

A. Signature  ☐ Agent
☐ Addressee

B. Received by (Printed Name) David L Penney C. Date of Delivery 5/8/07

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

7005 1820 0000 1456 3987

2007-002 NOH dh